STATE OF MICHIGAN

COURT OF APPEALS

MIRIAM P. COLEMAN,

Plaintiff-Appellee,

v

ROBERT HENRY COLEMAN,

Defendant-Appellant.

UNPUBLISHED
November 19, 2002

Nos. 229976; 230995
Kalamazoo Circuit Court
LC No. 88-002656-DM

Before: Murphy, P.J., and Sawyer and R. J. Danhof*, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order of the circuit court denying his motion to dismiss plaintiff's request for a de novo hearing and from an order of the circuit court modifying his child support obligation. We affirm in part and reverse in part and remand.

The parties were divorced in 1990 and have one minor child, a son born in 1987. In 1999, plaintiff moved for modification of the support obligation and defendant moved for a modification to the parenting time or for joint physical custody. The motions were heard by a family court referee, who prepared a recommended order denying plaintiff's motion and granting defendant's motion. The order was entered by the circuit court on April 13, 2000, which was mailed to the parties on April 17. The order provided that it would become effective unless an objection was filed within twenty-one days of the mailing date. On May 2, plaintiff filed objections to the recommended order, along with a praecipe for a three-hour de novo hearing as required by local court rule 2.501(A). The praecipe asked the court to assign a hearing date; plaintiff did not file a notice of hearing setting a specific date.

On May 5, the deputy court clerk mailed a notice setting the hearing date for June 23, 2000. On June 12, defendant filed a motion to adjourn the hearing date because he would be out of the country on business. The hearing was rescheduled for August 25. However, on July 28, defendant filed a motion to dismiss plaintiff's request for a de novo hearing as untimely under MCR 3.215(E)(3)(b) and MCR 3.215(F)(1). The trial court denied the motion, concluding that plaintiff followed appropriate procedure and that defendant was not prejudiced by any delay.

Following the August 25 hearing, the trial granted plaintiff's request for a modification to the child support obligation. The basis of the modification was proceeds defendant received

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

from exercising stock options. After the parties divorce, defendant took a job with Colgate-Palmolive Company. In addition to salary and bonus, defendant usually was awarded at the end of each year a certain number of options to purchase Colgate-Palmolive stock. The option period extended for ten years. In 1998, defendant decided to exercise certain options. He took an instantaneous loan from the company to acquire the stock. He then had a broker sell the stock he had just acquired, repaid the loan, and retained the net profits from the transaction. The sale netted defendant a $200,000 net profit. Thus far, defendant has not exercised any additional options.

The trial court concluded that the profits from the exercise of the stock options should be considered income for purposes of calculating child support, that the additional support obligation created by the profits should be spread over a two-year period, and that support would be retroactive to the date defendant received the proceeds from the first exercise of the options. This decision had the effect of increasing defendant's support obligation by approximately $100 per week for a two-year period.

We turn first to defendant's argument that the trial court erred when it denied defendant's motion to dismiss plaintiff's request for the de novo hearing of the referee's recommendation because plaintiff failed to comply with MCR 3.215. We disagree.

MCR 3.215(E)(3) provides in pertinent part as follows:

> A party may obtain a judicial hearing on any matter that has been the subject of a referee hearing by filing
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> * * *
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> (b) a written objection and notice of hearing within 21 days after the referee's recommendation for an order is served on the attorneys for the parties, or the parties if they are not represented by counsel, if the order concerns any other matter [than income withholding].

MCR 3.215(F)(1) provides that the "judicial hearing must be held within 21 days after the written objection is filed, unless the time is extended by the court for good cause."

Defendant argues that plaintiff failed to comply with the court rule because she did not file a notice of hearing with her objections which set the hearing within twenty-one days of the date of the filing of the objections. We are satisfied that plaintiff followed the appropriate procedure. Ninth Judicial Circuit LCR 2.501(A) provides as follows:

> Civil matters and domestic relations matters requiring hearings of more than 15 minutes are normally scheduled on Friday. All such hearings are requested by praecipe.

First, we agree that plaintiff acted appropriately. She filed her objections within twenty-one days of the mailing of the recommended order. Although it is true that she filed a praecipe with the objections rather than a notice of hearing which set the motion within twenty-one days, that practice is not only permitted under the local court rule, it is required.

This then leads us to the fact that the court clerk scheduled the hearing for June 23, twenty-five days past the deadline for holding the hearing as required by MCR 3.215(F)(1). Assuming that this was an oversight by the court clerk, we do not believe it appropriate to punish plaintiff for the clerk's failure. Indeed, this would be inconsistent with the provisions of MCR 1.105 which requires that the court rules "be construed to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties." However, it may also be simply a matter of a congested court docket, in which case the scheduling could reasonably be attributed to the court extending the time for good cause shown, the good cause being the court's docket situation. In any event, it is inappropriate to charge the court's actions against plaintiff with the effect of avoiding the resolution of plaintiff's motion when plaintiff did what was expected of her under the court rules. This is particularly true where no prejudice by the delay to defendant is shown, as evidenced by the fact that defendant requested a further delay in the hearing.

Defendant also argues that allowing flexibility in deadlines weakens all time limits in all other court rules. While there is some merit to this position in general terms, it does not translate to this situation in particular. We are not overlooking plaintiff's failure to meet a deadline; rather, we simply are not imposing the trial court's failure to meet the deadline on plaintiff. If the trial court consistently fails to meet deadlines imposed by the court rules, then there are other, more appropriate mechanisms available to address that issue with the court itself as the offending party. Even if there was an on-going problem with the trial court meeting deadlines, it would be inappropriate to unjustly reward some parties and punish other parties as a result of a trial court's shortcomings.[1]

Having dealt with the procedural issue, we now turn to the substantive issue of the consideration of the proceeds from exercising the stock options. The award of child support rests in the sound discretion of the trial court and its exercise of that discretion is presumed to be sound. *Morrison v Richerson*, 198 Mich App 202, 211; 497 NW2d 506 (1993). We are not persuaded that the trial court abused its discretion in considering the stock options in determining the child support. However, we do agree with defendant that the trial court erred by considering the gross proceeds rather than the net proceeds after taxes as required by the child support manual. Accordingly, on remand the trial court shall recalculate the amount of the support.

The matter is remanded to the trial court for further consideration consistent with this opinion. We do not retain jurisdiction. No costs, neither party having prevailed in full.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Robert J. Danhof

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[1] And we hasten to add that we are not intimating that this trial court has an on-going problem with meeting deadlines under the court rules. We have no indication that such a problem exists. We are speaking hypothetically in general terms, not addressing a specific, known problem with this trial court.